

**THE STATE OF TEXAS** §  
**COUNTIES OF COLLIN AND DENTON** §

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.**

## FIRST AMENDMENT TO REPURCHASE AGREEMENT

This First Amendment to Repurchase Agreement (this “Amendment”) is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2008 (the “Effective Date”), by and between Zarky Development, LLC (“Zarky”) and The City of Frisco (the “City”).

On January 5, 2007, Zarky and the City entered into a Repurchase Agreement (the “Agreement”) for the Property. The Agreement was recorded on January 8, 2007, as Document No. 20070108000033760, Official Public Records, Collin County, Texas; and recorded on January 8, 2007, as Document No. 2007-3219, Official Public Records, Denton County, Texas and affects the property described in Exhibit A attached hereto. Subject to the terms and conditions set forth below, the parties desire to amend the Agreement. Capitalized terms not defined herein shall have the meaning set forth in the Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Zarky and the City agree as follows:

1. Zarky hereby exercises the Repurchase Option. Within two business days after the Effective Date, Zarky shall deliver, in cash or good funds, the amount of \$350,000.00 (the “Escrowed Funds”) to Fidelity National Title Agency, Inc., 260 Three Lincoln Center, 5430 LBJ Freeway, Dallas, Texas 75240, attention Sue Jackson (972) 770-2132 (the “Escrow Agent”). Escrow Agent shall hold and disburse the Escrowed Funds in accordance with the terms of this Amendment. Escrow Agent shall invest the Escrowed Funds in a segregated, interest-bearing account and all interest earned on such funds shall become part of the Escrowed Funds. Once the parties determine the Net Square Footage (as defined below), the Escrow Funds and Minimum Balance (hereafter defined) shall be adjusted on a pro-rata basis to reflect any reduction in the Repurchase Price (as defined below). For example, if the Repurchase Price is reduced by two percent (2%) because the calculation of the Net Square Footage is a number less than the total square footage of the Property, then the required Escrowed Funds shall be reduced two percent (2%) (with the excess promptly refunded to Zarky) and the Minimum Balance shall likewise be reduced two percent (2%).

2. The closing (the “Closing”) of the Property pursuant to the Repurchase Option shall take place upon 30 days prior written notice from Zarky to the City; provided in all events the Closing shall take place not later than January 5, 2013. The repurchase price (the “Repurchase Price”) for the Property shall be equal to the product of (a) \$6.50 multiplied by (b) the Net Square Footage of the Property. For purposes of this Amendment, the “Net Square Footage” shall mean and refer to the positive difference between (a) the square total footage of the Property and (b) the sum of

any portion of the Property to be retained by the City, at its sole option and election, for Park Land. "Park Land" shall mean and refer to any portion of the Property retained by the City to be used for parks or other similar open space uses as determined solely by the City. The City shall make the determination of what portion of the Property it intends to retain for Park Land at or before the rezoning on the Property is approved by the City. If the City elects not to retain any Park Land, no adjustment will be made to the Purchase Price, and Zarky shall be obligated to close the purchase of the Property. If the City elects to keep a portion of the Property for Park Land, Zarky shall have the option to terminate the Contract and have returned to it the remaining balance of the Escrowed Funds. Such election shall be made within ten (10) days following receipt of written notice from the City of its intent to retain a portion of the Property for Park Land. Any Option Payments made to the City pursuant to Section 3 of this Amendment shall be retained by the City as liquidated damages, and the parties shall have no further rights under the Agreement or this Amendment.

3. If the Closing has not occurred on or before January 5, 2011, Zarky shall begin making monthly option payments ("Option Payment(s)") to the City in an amount equal to interest on the Repurchase Price accruing at a rate equal to five percent per annum, which Option Payments shall be non-refundable (except in the event of a default by the City that continues for a period of five (5) days after written notice) and are not applicable to the Repurchase Price at Closing. The Option Payments shall be due and payable monthly, commencing on February 6, 2011, and continuing on the sixth day of every month thereafter through the date of Closing (prorated for any partial period during the month of Closing).

4. Escrow Agent shall timely disburse to the City that portion of the Escrowed Funds required to pay the due and owing Option Payment for the applicable month; provided, however, in no event shall the Escrow Agent make such payment if such payment would result in an Escrowed Funds balance of less than \$350,000.00, subject to any pro-rata adjustment required in Section 1 above (the "Minimum Balance"). The Minimum Balance shall be reduced by \$35,000.00 for each additional acre the City elects to keep above five (5) acres. The parties shall reasonably cooperate to notify and authorize Escrow Agent to make such payments. In the event that a payment of an Option Payment from the Escrowed Funds would (absent the first sentence of this Section 4) result in a balance that is less than the Minimum Balance, Zarky shall be responsible for directly paying the Option Payments (or portion thereof that would take the Escrowed Funds below the Minimum Balance, as applicable) as provided herein until such time as the Escrowed Funds exceed the Minimum Balance, at which time Escrow Agent shall resume payment of the Option Payments from the Escrowed Funds pursuant to and subject to the terms and conditions of this Amendment. Notwithstanding anything to the contrary herein, the City will not unreasonably withhold its consent to Zarky's request to withdraw and substitute the Escrowed Funds so long as (a) Zarky provides to the City an irrevocable letter of credit issued by an FDIC-insured institution reasonably acceptable to the City in form reasonably satisfactory to the City in the amount of the then current balance of the Escrowed Funds (the "Letter of Credit"), or (b) Zarky grants a first lien deed of trust in favor of the City (the "Deed of Trust") on a two acre site adjacent to the Property with at least 295 square feet of frontage along the North Dallas Tollway. If the City grants Zarky's request to withdraw and substitute the Escrowed Funds, the City and Zarky shall so notify Escrow Agent, at which time Escrow Agent shall promptly deliver the then current Escrowed Funds to Zarky. In connection with the Closing, Zarky has the right to assign the Agreement to a special purpose entity beneficially owned or controlled by the principals of Zarky.

5. In the event that Zarky fails to purchase the Property in accordance with the terms hereof (due to no fault of the City) and such failure continues for a period of five (5) days after

written notice, then the City may, as its sole and exclusive remedy, terminate the Repurchase Option by written notice to Zarky and receive the then current balance of the Escrowed Funds (or draw upon the Letter of Credit or foreclose on the Deed of Trust and receive as a credit an amount equal to the amount of the Escrowed Funds at the time of the grant of the Deed of Trust) as liquidated damages from Zarky for Zarky's failure to purchase the Property in accordance with the terms hereof. The liquidated damages represent a good faith estimate of the City's actual damages for such default. In the event Zarky fails to purchase the Property as a result of a City default that continues for a period of five (5) days after written notice, Escrow Agent shall promptly deliver the then current Escrowed Funds to Zarky. If Zarky purchases the Property as herein provided, the then current Escrow Funds shall, at Zarky's option, be applied to the Repurchase Price at the Closing or returned to Zarky.

6. Zarky's notice address is hereby changed to the following:

Zarky Development, LLC  
Attn: President  
One Galleria Tower  
13355 Noel Rd, Suite 950  
Dallas, Texas 75240

7. Zarky will use commercially reasonable efforts to develop plans for the Property that will allow for the preservation of mature, viable trees located on the Property, provided that such plans are consistent with the development requirements and intended use of the Property in Zarky's commercially reasonable discretion.

8. This Amendment may be executed in any number of counterparts, each of which shall constitute one and the same instrument, and either party hereto may execute this Amendment by signing any such counterparts.

9. THE AGREEMENT, AS MODIFIED HEREBY, REMAINS IN FULL FORCE AND EFFECT.

IN WITNESS WHEREOF, this Amendment is executed to be effective as of the date first above written.

**ZARKY:**

**ZARKY DEVELOPMENT, LLC,**  
a Texas limited liability company

By: Zarky Ventures, LLC,  
a Texas limited liability company,  
its Managing Member

By: \_\_\_\_\_  
David Weinreb, Sole Member

**CITY:**

**CITY OF FRISCO**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Agreed to and Accepted by:**

**ESCROW AGENT:**

**FIDELITY NATIONAL TITLE AGENCY, INC.,**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

THE STATE OF TEXAS       §  
  §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2008, by David Weinreb, Sole Member of Zarky Ventures, LLC, a Texas limited liability company, managing member of Zarky Development, LLC, a Texas limited liability company, on behalf of said limited liability company.

My Commission Expires: \_\_\_\_\_  
Notary Public, State of Texas

THE STATE OF TEXAS       §  
  §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2008, by \_\_\_\_\_, \_\_\_\_\_ of the City of Frisco, a \_\_\_\_\_, on behalf of said \_\_\_\_\_.

My Commission Expires: \_\_\_\_\_  
Notary Public, State of Texas

THE STATE OF TEXAS       §  
  §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2008, by \_\_\_\_\_, \_\_\_\_\_ of Fidelity National Title, Inc., a \_\_\_\_\_, on behalf of said \_\_\_\_\_.

My Commission Expires: \_\_\_\_\_  
Notary Public, State of Texas

**AFTER RECORDING, RETURN TO:**

Zarky Development, LLC  
Attn: President  
One Galleria Tower  
13355 Noel Rd, Suite 950  
Dallas, Texas 75240

**Exhibit "A"**  
**Legal Description**

DESCRIPTION, of a 15.00 acre tract of land situated in the Crain and Warren Survey, Abstract No. 31, in the city of Frisco, Denton County, Texas, the W.B. Watkins Survey, Abstract No. 1004, in the City of Frisco, Collin County, Texas and the James Bolin Survey, city of Frisco, Collin County, Texas, said tract being part of a tract of land described in deed to Oakmont Land Nine, L.P. recorded in Volume 5361, Page 4107 of the Deed Records of Collin County, Texas; said 15.00 acre tract being more particularly described as follows:

COMMENCING, at the southeast end of a corner clip at the intersection of the south right-of-way line of Main Street (F.M. 720) (an 80 foot wide right-of-way) and the west right-of-way line of the Dallas North Tollway (a 300 foot wide right-of-way);

THENCE, South 07 degrees, 07 minutes, 09 seconds East, along the said west line of the Dallas North Tollway, a distance of 1441.68 feet to a ½-inch iron rod with "Pacheco Koch" cap set at the POINT OF BEGINNING;

THENCE, South 07 degrees, 07 minutes, 09 seconds East, continuing along the said west line of the Dallas North Tollway, a distance of 504.07 feet to a ½-inch iron rod found for corner at the southeast corner of said Oakmont Land Nine, L.P. tract; said point being the northeast corner of a tract of land described in deed to Eland Energy, Inc. recorded in Volume 5055, Page 2773 of the Deed Records of Denton County, Texas;

THENCE, North 89 degrees, 50 minutes, 13 seconds West, along the south line of said Oakmont Land Nine, L.P. tract and the north line of said Eland Energy, Inc. tract, passing at 954.92 feet the northwest corner of said Eland Energy, Inc. tract, said point also being the northeast corner of a tract of land described in deed to FLSC, Ltd. recorded in County Clerk's File No. 2005-80702, Deed Records of Denton County, Texas, continuing along the said south line of Oakmont Land Nine, L.P. and the north line of said FLSC, Ltd. tract, a total distance of 1338.75 feet to a ½-inch iron rod with "Pacheco Koch" cap set for corner;

THENCE, North 00 degrees, 09 minutes, 47 seconds East, departing the said south line of Oakmont Land Nine tract, a distance of 500.00 feet to a ½-inch iron rod with "Pacheco Koch" cap set for corner;

THENCE, South 89 degrees, 50 minutes, 13 seconds East, a distance of 1274.85 feet to the POINT OF BEGINNING,

CONTAINING: 653,400 square feet or 15.000 acres of land, more or less.